

Notice of Allowability

Application No.

09/719,670

Examiner

Daniel S. Metzmaier

Applicant(s)

BLECKMANN ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to TD and reconsideration request filed June 8, 2004 and interview of June 24, 2004.
2. ☒ The allowed claim(s) is/are 5-14.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>06/24/2004</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

Claims 5-14 are allowed.

Response to Amendment

1. An non-Final Office Action was mailed on December 24, 2003. Applicants filed a Notice of Appeal on December 29, 2003. Said Notice of Appeal was filed five days after the case was at least twice rejected (see 37 CFR 1.191(a)) and therefore has two time periods running. MPEP 710.04 specifically addresses said facts and states:

“There sometimes arises a situation where two different periods for reply are running against an application, the one limited by the regular statutory period, the other by the limited period set in a subsequent Office action. The running of the first period is not suspended nor affected by an *ex parte* limited time action or even by an appeal therefrom. . . .”

The June 8, 2004 response is deemed timely with the three month extension filed and is within the six-month statutory period for response of the Office Action mailed December 24, 2003.

Terminal Disclaimer

2. The terminal disclaimer filed on June 8, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent issuing from application Serial No. 09/436,171 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Examiner's amendment

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

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by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with David D. Kim on June 24, 2004.

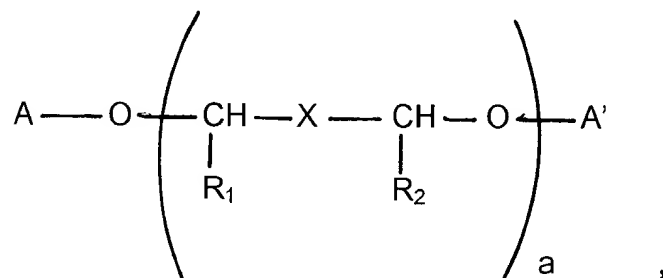
The application has been amended as follows:

Replace all claims with the list of claims as follows:

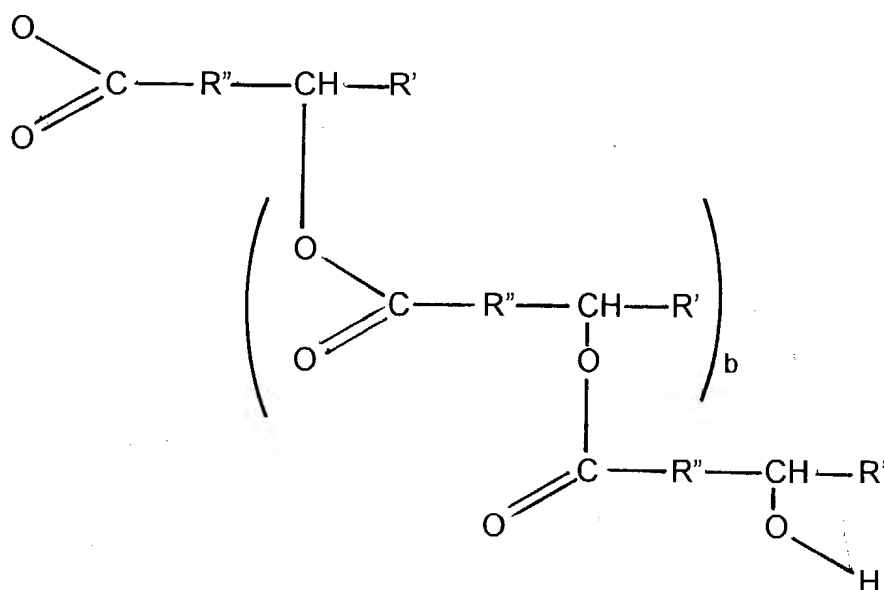
Claims 1-4. (Canceled).

5. (Previously presented) A water-in-oil (W/O) emulsion having a viscosity of at most 5000 mPa · s, said W/O emulsion comprising:

- a) an aqueous phase comprising a content of water and water-soluble substances totaling at least 75% by weight, based on a total weight of the emulsion;
- b) an oil phase comprising a content of lipids, emulsifiers and lipophilic constituents totaling at least 15% by weight, based on a total weight of the emulsion, wherein the oil phase comprises at least 75% by weight, based on the weight of the oil phase, of one or more substances selected from the group consisting of:
 - i) non-polar lipids which are liquid at room temperature and have a polarity of greater than 30 mN/m; and
 - ii) silicones of any polarity;
- c) at least one interface-active substance selected from the group consisting of substances of the formula (I);



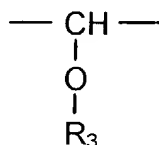
where A and A' are identical or different organic radicals selected from the group consisting of branched and unbranched, saturated and unsaturated alkyl and acyl radicals and hydroxyacyl radicals having 10-30 carbon atoms, and also from the group consisting of hydroxyacyl groups connected to one another via ester functions in accordance with the following scheme:



where R' is selected from the group consisting of branched and unbranched alkyl groups having 1 to 20 carbon atoms and R'' is selected from the group consisting of branched and unbranched alkylene groups having 1 to 20 carbon atoms, and b is a number from 0 to 200;

a is a number from 1 to 100:

X is a single bond or the group:



R₁ and R₂ independently represent H or methyl; and

R₃ is selected from the group consisting of H and branched and unbranched, saturated and unsaturated alkyl and acyl radicals having 1 to 20 carbon atoms.

6. (Previously presented) The W/O emulsion according to claim 5, wherein a is a number from 2 to 60.

7. (Previously presented) The W/O emulsion according to claim 6, wherein a is a number from 5 to 40.

8. (Previously presented) The W/O emulsion according to claim 5, wherein the content of water and water soluble substances is greater than 80% by weight, based on the total weight of the emulsion.

9. (Previously presented) The W/O emulsion according to claim 8, wherein the content of water and water soluble substances is greater than 85% by weight, based on the total weight of the emulsion.

10. (Previously presented) The W/O emulsion according to claim 5, wherein the interface-active substance is polyethylene glycol-30-dipolyhydroxystearate.

11. (Previously presented) The W/O emulsion according to claim 5, wherein the oil phase comprises at least 50% by weight, based on the total weight of the oil phase, of at least one substance selected from the group consisting of Vaseline (petrolatum), paraffin oil and polyolefins.

12. (Previously presented) The W/O emulsion according to claim 11, wherein the oil phase comprises more than 75% by weight, based on the total weight of the oil phase, of at least one substance selected from the group consisting of Vaseline (petrolatum), paraffin oil and polyolefins.

13. (Previously presented) The W/O emulsion according to claim 11, wherein the oil phase comprises one or more polydecenes.

14. (Previously presented) A method of caring for skin or hair comprising topically applying thereto an effective amount therefor of the W/O emulsion according to any one of claims 5-13.

Reasons for allowance

4. The following is an examiner's statement of reasons for allowance: Applicants' response has obviated the issues remaining of record. The above amendment merely corrects the claim status identifiers to those acceptable to the printer.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Daniel S. Metzmaier
Primary Examiner
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DSM